



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Alejandro Martinez D.C.

Respondent Name

Commerce & Industry Insurance

MFDR Tracking Number

M4-13-2423-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

May 22, 2013

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The Texas-chiropractor's use of needle EMG to evaluate patients is within a chiropractor's scope of practice in the state of Texas, assuming that requisite training has been received. Dr. Martinez is a trained and licensed provider in the specialty of Electrodiagnostics..."

Amount in Dispute: \$3,720.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "On 04/05/12 the Texas Third Court of Appeals ruled that Rule 75.17 of Title 22 of the Texas Administrative Code was void meaning that a doctor of chiropractic could not perform a needle EMG or manipulation under anesthesia. The Texas Board of Chiropractic has recently revised Rule 75.17 to bring it in compliance with the appellate court findings."

Response Submitted by: AIG, 4100 Alpha Rd, Ste 700, Dallas, TX 75244

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
December 6, 2012	99204 – 25, Evaluation and management of a new patient 95934 – 59 H-reflex, amplitude and latency study 95904 – 59 Nerve conduction 95900 – 59 Nerve conduction 95903 – 59 Nerve conduction study 95861 Needle electromyography A4556 Electrodes A4215 Needle, sterile A4558 Conductive gel or paste	\$3,720.00	\$2,463.92

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.203, sets the reimbursement guidelines for the disputed service.
3. Texas Occupation Code, Chapter 201, Subchapter A, defines chiropractor scope of practice.
4. The services in dispute were reduced/denied by the respondent with the following reason codes:

- 185 – The rendering provider is not eligible to perform the service billed.
- - Service does not fall within the scope of the providers practice.
- - Our position remains the same if you disagree with our decision please contact the TWCC Medical Dispute Resolution

Issues

1. Is the rendering provider eligible to perform disputed services?
2. What is applicable rule for reimbursement of eligible services?
3. Is the requestor entitled to reimbursement for services provide?

Findings

1. The carrier denied the disputed services as, 185 – “The rendering provider is not eligible to perform the serviced billed.” AMA current procedural terminology (CPT) describes the disputed services as follows;

CPT codes, 95900, 95903, 95904, and 95934 fall in the category of nerve conduction tests. These tests involve placing a stimulating electrode is directly over the nerve to be tested. These are surface tests that do not involve needles. According to the medical documentation found, these services were performed by Alejandro Martinez, D.C. (Doctor of Chiropractic). As stated in the Texas Court of Appeals, Third District at Austin, NO. 03-10-00673-CV, Opinion dated April 5, 2012

In the second provision, paragraph(c)(3)(A), TBCE imposed certification and supervision requirements on any licenses who administered “electro-neuro diagnostic testing” that varied according to whether the testing was “surface (non-needle)” or involved the use of needles. The import or effect of paragraphs (c)(2)(D) and (c)(3)(A), as the parties agree, was that chiropractors with specified training and certification could utilize needle EMG in evaluating or examining patients. In their live petitions and summary-judgment motions, the Physician Parties challenged the validity of the two rule provisions **specifically addressing needle EMG** [emphasis added]- 75.17(c)(2)(D) and (c)(3)(A) – plus the general standard regarding use of needles-75.17(a)(3).”

That is, surface tests were not in question during this suit. Pursuant to §75.17(c)(3)(A) effective December 24, 2009, *34 Texas Register 9208*, services 95903, 95904, and 95934 are within the scope of chiropractic practice because they are surface tests. The workers’ compensation carrier denial of *185-The rendering provider is not eligible to perform the service billed*, is therefore not supported. Reimbursement is recommended for these services.

CPT Code 95861, “Needle electromyography”. Texas Occupations Code § Sec. 201.002, Practice Of Chiropractic, Chapter 201, Chiropractors, states in pertinent part, “(3) “Incisive or surgical procedure” includes making an incision into any tissue, cavity, or organ by any person or implement... (c)The practice of chiropractic does not include: (1) incisive or surgical procedures...” 28 Tex. Admin. Code section 134.203(a)(6) states “Notwithstanding Medicare payment policies, chiropractors may be reimbursed for services provided within the scope of their practice act.” The division finds that disputed service code 95861 is not within the scope of chiropractic practice because it is an electro-diagnostic test that involves the insertion of a needle into the patient. The carrier’s denial that the provider was not eligible to perform this service is supported. No reimbursement can be recommended for the needle EMG pursuant to 28 Tex. Admin. Code section 134.203(a) (6).

CPT Code A4556, Electrodes; Has a Status Code “P” which in pertinent part states, “Bundled Service” Payment for covered services are always bundled into payment for other services not specified.“ No additional payment can be recommended.

CPT Code A4215, Needles, Has a Status Code “X” which in pertinent part states, “Statutory Exclusion, Not covered by Medicare in any payment system.” No additional payment can be recommended

CPT Code A4558, Conductive gel or paste, Has a Status Code “P” which in pertinent part states, “Bundled Service” Payment for covered services are always bundled into payment for other services not specified.“ No additional payment can be recommended.

2. 28 Texas Administrative Code 134.203(b)(1) states in pertinent part “(b) For coding, billing, reporting, and reimbursement of professional medical services, Texas workers’ compensation system participants shall apply the following: (1) Medicare payment policies, including its coding; billing;

correct coding initiatives (CCI) edits; modifiers; bonus payments for health professional shortage areas (HPSAs) and physician scarcity areas (PSAs); and other payment policies in effect on the date a service is provided with any additions or exceptions in the rules.” CPT Code, 99204, “Office or other outpatient visit for the evaluation and management of a new patient, which requires these 3 key components; A comprehensive history; A comprehensive examination; Medical decision making of moderate complexity.” Review of the submitted documentation finds no documentation to support a comprehensive exam was preformed. The provisions of 134.203 are not met, no additional payment can be recommended.

3. 28 Texas Administrative Code 134.203(c) states in pertinent part, “To determine the MAR for professional services, system participants shall apply the Medicare payment policies with minimal modifications,” For services in 2012, the maximum allowable reimbursement = (TDI-DWC Conversion Factor / Medicare Conversion Factor) x Non-Facility Price or:

Code	MAR Calculation	Units	Billed Amount	Allowable
99204 25	No documentation to support level of service	1	260.00	n/a
95934 59	$(54.86 / 34.0376) \times 57.64 \times 2 \text{ units} =$ \$185.02	2	260.00	\$185.80
95904 59	$(54.86 / 34.0376) \times 52.70 \times 4 \text{ units} =$ \$340.34	4	520.00	\$340.34
95900 59	$(54.86 / 34.0376) \times 59.86 \times 6 \text{ units} =$ \$578.88	6	780.00	\$578.88
95903 59	$(54.86 / 34.0376) \times 70.26 \times 12 \text{ units} =$ \$1,358.90	12	1560.00	\$1,358.90
95861	Carrier's denial supported	1	250.00	n/a
A4556	Bundled service not separately payable	1	30.00	n/a
A4215	Excluded service not separately payable	1	30.00	n/a
A4558	Bundled service not separately payable	1	30.00	n/a
		Total	\$3,720.00	\$2,463.92

The total allowable for the disputed services eligible for review is \$2,463.92. This amount is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$2,463.92.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$2,463.92 plus applicable accrued interest per 28 Texas Administrative Code §134.130 due within 30 days of receipt of this Order.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

June 12, 2014
Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, 37 *Texas Register* 3833, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.